

Sullivan & Connors

How 2 - 8100

OGC Has Reviewed

17 October 1955

MEMORANDUM FOR: Mr. Houston

SUBJECT: Personal Liability of Director in Personal Use
of Official Car

1. In a memorandum dated 29 December 1954, [REDACTED] called 25X1A9a our attention to a Court of Appeals opinion holding a Government official personally liable when his Government owned and operated automobile was involved in an accident while being used for private purposes. Phelps v. Boone et al, 67 F. 2d, 574. That opinion gives rise to a question as to the possible liability of the Director while using his official car for private purposes.

2. The accident in the Boone case occurred in the District of Columbia in 1932. At that time the principle that the owner is liable for the negligence of others only when his car is operated by a servant or agent within the scope of his authority prevailed here. Subsequently, the presently controlling statute came into effect. Section 40-403 of the District of Columbia Code provides that where a motor vehicle is operated by any person other than the owner with the owner's consent, the operator is deemed to be the agent of the owner. This statute, combined with the Tort Claims Act, also enacted since the Boone case, would place liability on the United States if the case were to be decided today.

3. No statute like the District of Columbia statute imputing liability to the owner is in effect in Maryland or Virginia. Therefore, in those States, as well as in some others, application of the common law principles of agency might result in a decision parallel to that in the Boone case. However disputable that decision is as a matter of law, the fact that one court delivered it is indication that others might also.

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4. [REDACTED], the Chief of the Director's Security Staff, reports that the Director rarely uses his car for personal business. If he does, it is usually on an occasion which is at least quasi-official in nature, as when he attends social functions at foreign embassies. Nevertheless, in the event of an accident while using the car in such a manner, it might be impossible for diplomatic or security reasons to claim in court that the use was an official one.

Another problem exists in that a court might not agree with our position and the informal opinion of the Comptroller General that the Director has authority to use his official car for personal business. If a court in a State which follows the common law principle of agency in such cases should refuse to accept our contention that such use is authorized, the Director might be held personally liable under a decision following that in the Boone case. Even under the provisions of the District of Columbia Code, as stated above, it is possible that the Director would be held personally liable if the court should decide that the Government, as owner, had no authority without legislation to authorize personal use of this vehicle.

25X1A9a 5. The Director carries liability insurance on his personal automobile and normally such policies provide coverage for occasional use of a substitute vehicle. However, occasional use of the Director's official car might not be covered in that it probably could not be considered a substitute vehicle in the sense of most automobile liability insurance policies, that is, a substitute vehicle is usually considered to be one which replaces the insured vehicle when the insured vehicle is being repaired or is out of use for other reasons. The Director's personal car might well be in use at the same time he was using his official car for personal business. [REDACTED] and 25X1A9a [REDACTED] have checked the files in the Director's office and cannot find the insurance policy on his personal car. This is a matter which is handled by the Director's secretary in New York and the policy is probably in her hands. The Director did request his New York secretary to obtain insurance or transfer his present policy when he bought a new car recently, so there is insurance in force although we do not have the policy available to check its terms. [REDACTED] is sure that in directing his New York secretary to insure the new car, he made no mention of extending coverage to his official vehicle. 25X1A9a

6. Inasmuch as there would appear to be a distinct possibility, however remote, of the Director being held liable in the event of an accident while his official car is in personal use, it is recommended that steps be taken to see to it that his liability insurance on his personal automobile covers personal use of his official vehicle.

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[REDACTED]
Office of General Counsel